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President Trump, Litigator In Chief

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Presidential candidate Donald Trump, speaking February 26: “We’re going to open up those libel laws. So when The New York Times writes a hit piece which is a total disgrace or when The Washington Post, which is there for other reasons, writes a hit piece, we can sue them and win money instead of having no chance of winning because they’re totally protected.”

Trump also said of Amazon, whose Jeff Bezos owns The Washington Post, a newspaper that just ran an aneditorial seeking to rally opposition to Trump: “If I become president, oh, do they have problems. They’re going to have such problems.”

The president has no direct power to change libel law, which consists of state law constrained by constitutional law as laid out by the Supreme Court in New York Times Co. v. Sullivan. A president could appoint justices intent on overturning the press protections of Sullivan or promote a constitutional amendment to overturn it.

Assuming one or the other eventually was made to happen, further changes in libel law would probably require action at the state level, short of some novel attempt to create a federal cause of action for defamation.

But although Trump is unlikely to obtain the exact set of changes he outlines, the outburst is psychologically revealing. Donald Trump has been filing and threatening lawsuits to shut up critics and adversaries over the whole course of his career.

He dragged reporter Tim O’Brien through years of litigation over a relatively favorable Trump biography that assigned a lower valuation to his net worth than he thought it should have.

He sued the Chicago Tribune’s architecture critic over a piece arguing that a planned Trump skyscraper in lower Manhattan would be “one of the silliest things” that could be built in the city.

He used the threat of litigation to get an investment firm to fire an analyst who correctly predicted that the Taj Mahal casino would not be a financial success. He sued comedian Bill Maher over a joke.

I have been writing about the evils of litigation for something like 30 years, and following the litigious exploits of Donald Trump for very nearly that long. I think it very plausible to expect

that if he were elected president, he would bring to the White House the same spirit of litigiousness he has so often shown as a public figure.

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